

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

STEVEN PAUL YUKER,

Petitioner,

Case No. 13-20599

v

Honorable Thomas L. Ludington

UNITED STATES OF AMERICA,

Respondent.

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**ORDER DENYING MOTION FOR RECONSIDERATION**

On December 3, 2013, Petitioner Steven Yuker pleaded guilty to distributing cocaine base. ECF No. 29. His plea agreement stated that his guideline range was 78 to 97 months. *Id.* The agreement further provided “the sentence of imprisonment in this case may not exceed the middle of the sentencing guideline range as determined by the court pursuant to this agreement.” *Id.* at 7–8. He was sentenced to 90 months of imprisonment, and judgment was entered on March 25, 2014. ECF No. 33.

**I.**

On June 18, 2015, the Court appointed the Federal Defender’s Office to determine whether Yuker was “eligible for earlier release pursuant to 18 U.S.C. §3582.” ECF No. 34. 18 U.S.C. §3582(c)(2) provides:

The court may not modify a term of imprisonment once it has been imposed except that...in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. §3582(c)(2).

On June 29, 2015, the Federal Defender Office filed notice that Joan Morgan was appearing as Yuker's attorney. ECF No. 35. On July 30, 2015, the parties stipulated that pursuant to 18 U.S.C. §3582(c)(2), Yuker's guideline range "would be based on a total offense level of 26, which, in combination with a criminal history category II, results in a guideline range of 70-87 months in custody." ECF No. 36. Subsequently, the Court entered an order reducing Yuker's sentence from 90 months to 85 months. ECF No. 37.

On January 2, 2019, Yuker filed a motion for reconsideration of his sentence, arguing that Morgan provided ineffective assistance of counsel. ECF No. 47. He based this assertion on the provision in his plea agreement providing that "[p]ursuant to Federal Rule of Criminal Procedure 11(c)(1)(C), the sentence of imprisonment in this case may not exceed the middle of the sentencing guideline range as determined by the court pursuant to this agreement." ECF No. 29 at 7–8. He described this as a "binding sentencing recommendation" that was not followed when the Court decreased his sentence. *Id.* at 7. He reasoned that the middle of the decreased range is 78.5 months, not 85 months.

In its order denying the motion, the Court explained that a §3582(c)(2) reduction is within the discretion of the Court. The Supreme Court has held that "the statute permits but does not require the court to reduce a sentence." *Freeman v. U.S.* 131 S. Ct. 2685, 2694 (2011). Accordingly, the Court was not required to reduce Yuker's sentence in the first instance. By that same token, it was within the Court's discretion to determine the length of the sentence reduction.

Yuker has now filed a motion for reconsideration of the Court's order denying his previous motion for reconsideration. In it, he reiterates the same arguments he presented in his previous motion for reconsideration that were rejected. Accordingly, his motion will be denied.

## II.

Accordingly, it is **ORDERED** that Defendant's motion for reconsideration, ECF No. 51, is **DENIED**.

Dated: May 6, 2019

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and to **Steven Paul Yaker** #48894-039, CANAAN U.S. PENITENTIARY, Inmate Mail/Parcels, P.O. BOX 300, WAYMART, PA 18472 by first class U.S. mail on May 6, 2019.

s/Kelly Winslow  
KELLY WINSLOW, Case Manager